

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHANE ANTHONY BROWNING,

Petitioner,

No. 10-CV-13818

vs.

Hon. Gerald E. Rosen

PAUL KLEE,

Respondent.

ORDER DENYING PETITIONER'S APPLICATION
TO PROCEED ON APPEAL *IN FORMA PAUPERIS*

On March 22, 2013, the Court entered a Opinion and Order denying Shane Browning's Petition for a Writ of Habeas Corpus and dismissed this case, with prejudice. Plaintiff now seeks to appeal the Court's ruling and asks that the appeal fees be waived and he be granted leave to proceed on appeal *in forma pauperis*.

The United States Court of Appeals for the Sixth Circuit requires that all district courts in the circuit determine, in all cases where the appellant seeks to proceed *in forma pauperis*, whether the appeal would be frivolous, and has specifically asked this Court to make this determination with respect to Petitioner' Klee's case.

28 U.S.C. § 1915(a)(3) provides that “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” The Supreme Court has interpreted “good faith” as stated in § 1915 as “not frivolous”. *Coppedge v. United States*, 369 U.S. 438, 445-446 (1962). The Supreme Court has

further defined a “frivolous” action as one that “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 1831 (1989).

For the reasons stated in this Court’s Opinion and Order of March 22, 2013, Plaintiff’s claims are factually and legally deficient. The Court, therefore, makes the finding that Plaintiff’s claims are frivolous because they lack an arguable basis in law or fact. Accordingly, this Court determines that any appeal from the Court’s decision would be frivolous and, therefore, hereby certifies that Plaintiff’s appeal is not taken in good faith.

Accordingly, pursuant to 28 U.S.C. § 1915(a)(3), the Court determines that Plaintiff’s appeal may not be taken *in forma pauperis*.

For the foregoing reasons,

IT IS HEREBY ORDERED that Plaintiff’s Application for Leave to Proceed on Appeal *In Forma Pauperis* [Dkt. # 40] is DENIED.

Dated: October 2, 2013

S/Gerald E. Rosen
Chief Judge, United States District Court

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on October 2, 2013, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5135